

## **REMARKS**

### **Summary**

Claims 1-45 stand in this application. Claims 12, 17-19, 21-22, 31-32, 36-38 and 40-45 were previously withdrawn. Claims 1, 11, 20, 30 and 39 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 11, 20, 30 and 39 in order to facilitate prosecution on the merits.

### **Allowable Claims**

We would like to thank the Examiner for indicating the allowability of claim 39 if amended to overcome the § 112 rejection. Applicant submits that claim 39 has been amended and is in condition for allowance.

We would also like to thank the Examiner for indicating the allowability of claims 13-15, 23-25, 27-29 and 33-34 if amended to include all of the limitations of the base claims and any intervening claims. Applicant respectfully submits, however, that these claims represent patentable subject matter as currently listed based on the amendments and remarks given for the independent claims as discussed in detail below. Applicant would like to respectfully reserve the right, however, to amend the allowable claims into independent form during further prosecution if warranted.

**Claim Objections**

Claims 11, 20, 30 and 39 stand objected to based on claim informalities.

Applicant respectfully submits that claims 11, 20, 30 and 39 have been amended in accordance with the instructions in the Office Action and withdrawal of the claim objections is, therefore, respectfully requested.

**35 U.S.C. § 112**

At pages 4 and 5 of the Office Action, claims 1, 20, 30 and 39 have been rejected under 35 U.S.C. § 112 for failing to particularly point out and distinctly claims the subject matter which Applicant regards as the invention. Applicant respectfully traverses the rejection based on the above amendments and the following remarks.

Regarding claim 1, Applicant submits amendments have been made to clarify that the mobile communication device is communicating with the base station and to clarify that the assigned communication channel is consistent throughout the claim. Furthermore, Applicant submits that claim 1 clearly recited two distinct transmitters, one at the base station and one at the mobile communication device. Consequently, Applicant submits that the language of amended independent claim 1 is clear.

Applicant has amended claim 20 similarly to the amendments described above with reference to claim 1. Consequently, Applicant submits that amended independent claim 20 is clear.

Regarding claim 30, Applicant has amended “the assigned channel” to recite “the wireless communication channel” to remove the antecedent basis deficiency. Moreover,

Applicant submits that the limitation “a receiver” at line 11 has been amended to recite “the receiver.” Applicant submits, therefore, that the language of claim 30 is clear.

Claim 39 has been amended to remove the reference to a corresponding mobile communication device as recited above with reference to claim 1. Applicant submits that claim 39 is, therefore, clear.

The above referenced claims have been amended in accordance with the Office Action, and removal of the § 112 rejections are respectfully requested. Applicant further submits that the above amendments are made to overcome § 112 rejections and are not made to overcome the cited reference. Accordingly, these amendments should not be construed in a limiting manner.

### **35 U.S.C. § 102**

At page 6 of the Office Action claims 1-11, 16, 20, 26, 30 and 35 stand rejected under 35 U.S.C. § 102 as being anticipated by US 6,646,615 to Andrews et al. (“Andrews”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Andrews fails to teach each and every element recited in claims 1-11, 16, 20, 26, 30 and 35 and thus they define over Andrews. For example, with respect to claim 1, Andrews fails to teach, among other things, the following language:

generating control signals to configure a base transceiver station to transmit selected data streams to the mobile communications device on an assigned communication channel of a multiple access protocol....

According to the Office Action, this language is disclosed by Andrews at column 4, lines 27-44 and column 5, lines 42-49. Applicant respectfully disagrees.

Applicant respectfully submits that claim 1 defines over Andrews. Andrews at the given cite, in relevant part, states:

There is known theory that can be used to relate the information capacity  $C$  of the communication channel to the matrix  $H$ . More specifically, a quantity  $M(H)$ , referred to as the "mutual information" between the transmitter and the receiver, expresses the rate at which information can be transferred between a transmit antenna or antenna array of  $n$  elements, and a receive antenna or antenna array of  $n$  elements.

By way of contrast, the claimed subject matter teaches "generating control signals to configure a base transceiver station to transmit selected data streams to the mobile communications device on an assigned communication channel of a multiple access protocol...." Applicant submits that this is different than the above recited teaching of Andrews.

Applicant respectfully submits that the cited portions of Andrews clearly do not teach the above recited language of claim 1. Furthermore, Applicant submits that he has been unable to locate at least the above recited language of claim 1 in the teaching of Andrews. Consequently, Andrews fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2-10, which

depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Andrews.

Claims 11, 20 and 30 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 11, 20 and 30 are not anticipated and are patentable over Andrews for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 11, 20 and 30. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 16, 26 and 35 that depend from claims 11, 20 and 30 respectively, and therefore contain additional features that further distinguish these claims from Andrews.

For at least the above reasons, Applicant submits that claims 1-11, 16, 20, 26, 30 and 35 recite novel features not shown by the cited reference. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited reference. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited reference.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

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It is believed that claims 1-11, 13-16, 20, 23-30, 33-35 and 39 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

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